1953. **File No.** S Bij 1/53

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Legal **DEPARTMENT**

Examined **E BRANCH**

Subject:— Suits — Bijapur.

C. S. No. 255 of 1952.

Ahmed Radhasani Dodmani - - - - - Plff.

v/s

The State of Bombay and others — Defts.

Re: for a declaration that the sale of the suit property held on 24th Dec 1951 and confirmed by the Collector on 6th August 1952, is illegal and void and for an injunction to restrain the defendant from handing over possession of the suit property to defendant No. 8 and for allowing the plaintiff to redeem the suit property, etc

File No.

Std. Scotch Slip 24-B

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1/53

To the courtof the Civil Judge(Sr.Dn) Bijapur.

M.Ahmad Rahasani Dodmani,age 48,occupation Dentist of Jamkhandi ---Plaintiff.

Vs.

1. Mahabubi Yamanasani Dodmani,age 29,occupation House hold work,of Bijapur.
2) Shiraj Yamanasani Dodmani age51, occupation Govt.servant of Jamkhandi.
3) Huseni Yemmunsani Dodmani age 28,occupation Govt.servant, at Dehoo road,Poona.
4) Allasani Radhasani Dodmani,age 55 occupation house hold work of Jamkhandi.
5) Husenbi Kadarsaheb Dodmani,age 55,occupation House hold work at Athani.
6) Chandasaheb Radhasani Dodmani,age,50.Occ-Tailor, of Hubli.
7) Hatim Ajumeersaheb Dodmani age 37,Occ. Govt.servant of Athani.
8) Manikchand Amatram Shaha, age 48, occupation Merchant of Jamkhandi.
9) The State of Bombay, represented by the Collector of Bijapur.. .... Defendants.

Claim Rs.1000/-

plaintiff submits as hereunder :-

1) That one Rahdasani Dodmani of Jamkhandi mortgaged the following property to the State Bank of Jamkhandi on 11-11-1929 for Rs.1000/-

a) Description of property :-
x C.S.No.2777, Municipal No.1693 and 1694 of Jamkhandi.
b) Amount of the mortgage:- 1000/-Rs.
c) Rate of interest :-0-12-6.
d) Radhasani, Yamanasani and Allasani are the mortgagers.
e Date of Mortgage :- 11-11-1929.
f) Radhasani stipulated that Rs.15/- every month of her pay should be deducted towards the mortgage debt.
g) The State Bank, Jamkhandi si a mortgageee.

Remarks on para 1:-
Date of mortgage bond is 12-11-1929. Radhasani had bound her self to pay Rs.15/- per month from her pay to satisfy the annual interest and for satisfaction of the prineiple from the balance (please see the bond-p-375).

The said Radhasani died in 1934 and the present plaintiff along with defendents 1 to 7 are the heirs of the said Radhasani. The defendants 1 to 7 are not willing to join as plaintiff in this suit as they are interested in the mortgage property, they are made defendants. The plaintiff who is entitled to redeem the mortgage, has brought this suit for redumption of the mortgage property after taking accounts and at the same time declaring that the sale in favour of Defendant No.8 is illegal and as such the right to reddem has not become extinguished.

Remarks on para 2:-
Radhasani died on 19-11-33. Defendant No.1 is recognised as heir to the deceased Radhasani.Deft.No.2 is entered in C.T.S.records as manager of Joint family property. Others are not recognised to be the heirs as per Revenue records.So the plaintiff was advised to adjudicate his rights in civil Court.The plaintiff was given an opportuntiy to pay the dues and redeem the property under Sec.80 read with Sec.16 L.R.C. The sale is legal.

3. The said Radhasani had mortgaged her other properties to the State Bank,Jamkhandi on different dates taking a loan of nearly Rs.3000/- The said two mortgagers being possessory mortgage, have nothing to do with this present transaction, which is simple mortgage.

Remarks on para 3:-
The accounts of three mortgage bonds are blended and mixed.The recovery proceedings are for all the amounts in a lump sum.

4. The said bank of Jamkhandi has taken said Bank mortgage bond in question on 11-11-29 and the said bank has kept accounts as to the amount due from the plaintiff and the deft.No. 1 to 7. The plaintiff is not in a possession to give the exact amount due.

The accounts are maintained in the name of the debtor and not in the plaintiff.

5. The defendant No.9 after the Jamkhandi State becomes merged in theState of Bombay has been managin the State Bank by recovering his dues etc. It may be noted that the said bank is not theGovt.institution even before the merger and it was never a department of Govt.even. The said Bak was an ordinary private institution run by the Chi f of Jamkhandi. After the merger the defendant No.9 unauthorisedly brought the suit property to sale under the movisions of the Land Revenue Code without obtaining a decree from a competent court. This act of the Defendant No.9 is illegal and altravirous and no title in the suit property passed to the defendant No.8 auction purhcaser, in the said sale. The said sale took place on 24-12-51.

Not admitted. The Ex-State Bank was a concern of the State. After merger it became State (Bombay) property. Accordingly the dues payba to the bak wer recoverabl as an arrear ofL.R.due to the Bombay State under th provisions of Chapter XI of L.R.C.

6. The plaintiff made representations to the proper authorities that the sale should not be held and confirmed and that he should be given opportunity to redeem the property. But defendant No.9 being misled by the defendant No. is threatening to plaintiff to put defendant No.8 in possession of the suit property by ousting the plaintiff from the possession of the property.

The plaintiff wants to delay the recovery. The recovery of the dues by postponing sales on the plea that he is ready to credit the dues. He has failed to credit the dues though an opportunity was given to him. Please see detailed report in ra 4 of our report.

Para 5 :

Not admitted. The Ex-State Bank was a concern of the State Govt. and managed by the State. After merger it became state(Bombay)property. Accordingly the dues payable to the bank were recoverable as an arrear of L.R.due to the Bombay State under the provisions of Chapter XI of L.R.C.

Defendant No.9 after the Jamkhandi State becomes merged in the State of Bombay has been managing the State Bank by recovering his dues etc. It may be noted that the said Bank is notthe Govt.institution eve before the merger and it was never department of Govt.even. The said Bank was an ordinary private institution run by the Chief of Jamkhandi.After the merger the defendant No.9 unauthorisedly brought the suit property to sale under the provisions of the Land Revenue Code without obtaining a decree from a competent court.This act of the defendant No.9 is illegal and altravirous and no title in the suit property passed to defendant No.8, auction purchaser, in the said sale. The said sale took place on 24-12-51.

Para.6:- The plaintiff wants to delay the recovery of the dues by postponing sales on the plea that he is ready to credit the dues. He has failed to credit the dues though an opportunity was given to him. Please see detailed report in para 4 of our report.

6. The plaintiff made representations to the proper authorities tha the sale should not be held and confirmed and that he should be given opportunity to redeem the property. But defendant No.9 being misled by the defendant No.8 is threatening to plaintiff to put defendant No.8 in possession of the suit property by ousting the plaintiff from the possession of the property.

Para 7:- Facts not admitted. The Collector is at liberty to sell any property of the defaulterx under section 155 L.R.C. The sale is illegal.

7. Besides this the defendant No. 9 without any power given to him under the Law has sold the property for the recovery of Rs.4000/- and odd Rs. due not under this particular Mortgage but under two other mortgages effected by Radhasani. This unauthorised act of the defendant is selling the property as against law, altravirous and illegal. Defendant No. 8 and 9 inspite of the representation, refused to allow the plaintiff to redeem the property Hence this suit for a declaration that the sale held by the Defendant No.9 is illegal and ultravirous and that Defendant No.8 got no title or interest in the suit property under such sale and also for an injunction restraining defendant No.9 from evicting the plaintiff who is in possession of the property and handing overx possession of Defendant No.8. This shit is also for redemption of the suit propetryx as stated above.

8. The cause of action for this suit arose on 30-8-52 when Defendant No.9 issued a notice to hand over possession of Defendant No.8 and also on

Para 8:-If the dues were credited the erty would have been released.The r is right in taking steps t the plaintiff as the mortgaged property of old by auction to Deft.No.8 session.'

and also on 6-9-52 when Defendant No.9 is threatening the Plaintiff by physically removing ~~the~~ pemoving him from the property. The cause of action also arose for redumption when the Defendant No. 9 refused to redeem in 1952.

9. This suit is for a declaration that the sale is void and for an injuction restraining defendant No.9 from putting defendant No.8 in the possession of the suit property after removing the plaintiff physically. For this purose the suit is valued at Rs.5/-. This suit is also for redumption on court fee on Rs.1000/-. This suit ~~xxxxxxxxxxxxxx~~ is also for redumption on court fee on Rs.1000/- the mortgage amount is valued at Rs.1000/. This suit for the two reliefs are valued at Rs.1000/- for the purpose of court fee and also for pleader's fees and jurisdiction.

Para 9:-
This question may be examined in R.L.A's offic

10. The Defendant No.1 to 7 are interested in the mortgage property and they refuse to join the plaintiff to file the suit, they are made defendants as per Law. Defendant No.9 is ~~xxxx xxxxxxxxxxxxxxxxxx~~ responsible for holding legal sale and also refusing to allow the plaintiff to redeem. Defendant No.8 is a purchaser of the suit property in the illegal sale that was held in December 1951. Defendant No.8 and 9 are threatening to oust the plaintiff physically from the possession of the property. So they are made parties to this suit. ~~xx~~ Defendant No.8 is the State of Bombay. This suit is to be filed against him only in this Court. So this court has got jurisdiction to try this suit. The plaintiff has given a necessary Notice under Section 80 of the Civil Procedure Code on 18-1-1952 which was recived by the Defendant No.9 through the Collector, Bijapur on 22-1-52. After the Statutory period is over this suit is filed.

Para No.10:- The notice given under section 80 C.P.C. is not for the declaration of the sale as void and illegal. The sale is legal. As the plaintiff failed to credit the dues the property was not released.

11. The plaintiff prays :-

a) That the count be please to declare that the sale held by Defendant No.9 on 24-12-51 in respect of the suit property and confirmed is illegal and void and that Defendant No.8 in the said sale got no right title or interest in the said property and that Defendant No.9 be restrained permanently from possession of the suit property by handing over possession to Defendant No.8.

b) That the plaintiff be allowed to redeem this suit property and to have the same conveyed to him after taking accounts.

c) That the cost of the suit with such other relief as the court deems necessary be awarded.

Dated 8-9-1952.

I Ahmedasaheb S/O.Radhasani, Solmenly affirm. Deponent that what is stated above is true to the best of my knowledge and belief. I make this affirmation at Bijapur on 8th day of September 1952.

(Or. signed by P.A)

For Collector, Bijapur.

7 (25)

In the Court of theCivil Judge(Sr.Dn)Bijapur.

1) Ahmad Radhasani Dodmani,age 48,occupation Dentist, of Jamkhandi ... Plaintiff.

Vs.

1) Mahabubi Yamanasani Dodmani age 29,Occ. House hold work of Bijapur and 8(~~eight~~ other ... Defendants.

Claim Rs.1000/-

The Plaintiff submits as hereunder :-

1. That the Plaintiff has filed this suit for a declaration and injunction that defendant No.9 should be restrained from ousting the plaintiff from possession of the suit property and alsp for redumption of the property.

2. That the sale held by defendant No.9 is unauthorised, illegal and void. That in the said sale defendant No.9 got no interest.

3. That defendant No:9 issued a Notice on 30-8-1952 that the plaintiff should vacate the property immediately and the plaintiff has obstructed when possession was about to be taken. But defendant No.9 is threatening to remove the plaintiff forcibly from the possession of the property. To that effect he has issued a Notice dated 6-9-1952.

4. The defendant No. 9 has stated in the said Notice that if by 9-9-1952 possesssion is not delivered by the plaintiff he would forcibly remove him from the suit house

5. The plaintiff is practising as a Medical Practitioner and he has kept his professional articles in the suit property. He has been living in the said house with his family since a long time. If defendant No.9 is allowed to have his way to remove the plaintiff, his family people will be left in the street.

6. Besides this no house is available at Jamkhandi for the plaintiff and his family to live and the family will be left in the lurch if no temporary injunction is granted.

7. The plaintiff will be put to a heavy loss to the extent of thousands, if his articles are thrown out and the anxiety and the worry of his family people cannot be compensated in terms of money.

8. The defendants 8 and 9 will not been inconvenienced in any way if temporary injunction is granted pending the disposal of the suit.

Under these circumstances it is prayed that the Court be please to grant the temporary injunction pending the disposal of the suit and it is further prayed that the Court be pleased to communicate the order of temporary injunction by wire to the Mamlatdar of Jamkhandi, who has been acting on behalf of the defendant No.9.

Date 8-9-1952

(P.T.O.)

I Ahmedsaheb S/O Radhasani Dodmani solemnly affirm that what is stated above is true to the best of my knowledge and belief. I make this affirmation at Bijapur on 8th day of September 1952.

Filed in Court on 8-9-1952.

Sd/-G. N .Gokhale,
Pleader for plaintiff.

Order

Interim injunction granted against defendant 9 till disposal of this application. Notice to deft.No.9.

8-9-52.

Sd/-M.N.Nadakarni,
Civil Judge,Sr.Dn.

(28)

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Bijapur C.S. No.255/52.

Plaintiff has filed this suit against the State of Bombay and others for a declaration that sale of the suit property held on 24-12-51 and confirmed by the Collector on 6-8-52, is illegal and void and for an ~~injunction~~ injunction to restrain the defendant from handing over possession of the suit property to Deft. No.8 and for allowing the plaintiff to redeem the suit property etc.

2. Defende of this suit may be sanctioned on the lines of the accompanying brief.

MMC
23/12/52

Solr (mfl.) 8M
23/12

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
23 DEC 1952

* Secretary R.D 23/12

B'BM

* No. 21682/E
23-12-52.

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In the Court of the Civil Judge,Senior Division,
at Bijapur.
Civil Suit No. 255 of 1952.

(1) Ahmad Radhasani Dodmani .... Plaintiff.

Vs.

(1) Mahibubi Dodmani and others .... Defendants.

Herein the written-statement of the State of Bombay defendant No.9 is as follows:-

(1) This defendant does not admit the plaintiff to be the heir of Radhasani and puts the plaintiff to strict proof of the same. The plaintiff has no title or ownership over the suit property. The plaintiff is not entitled to redeem the mortgage and he is not entitled to sue for any of the reliefs prayed for by him. The allegations to the contrary in Para 2 of the plaint are not correct and are denied. The allegation in Para 2 of the plaint that the plaintiff along with defendants Nos. 1 to 7 are the heirs of the said Radhasani is not quite correct. So also the allegation in Para 4 of the plaint that the account of the amount due from the plaintiff and defendants Nos. 1 to 7 is kept is not quite correct. Similarly the allegation in Para 10 of the plaint that all the defendants Nos. 1 to 7 are interested in the mortgaged property is not quite correct.

(2) Shrimati Radhasani died on 19-11-1933. She belonged to a caste knwon as Kalawant or Kalawantinis and according to the custom prevailing amongst them the eldest daughter inherits the property of her mother to the exclusion of the other male and female issues. According to this custom and usage also the plaintiff is not heir to the deceased Radhasani.

(3) Shrimati Radhasani was given by the State Bank of Ex-Jamkhandi State a loan of Rs 1200/- on a mortgage-bond executed on 5-4-1923 mortgaging with possession her land

S.No 597/2. She was further given a loan of Rs 1719-10-0 on a mortgage bond executed by her and others on 3-11-1925 mortgaging with possession some of her other property in addition to the land mentioned in the previous mortgage-bond. The balance due on the previous mortgage-bond was consolidated and the total amount of the mortgage debt of the second bond was Rs 2500/-. The bond provided that if the amount was not paid within the stipulated period, the mortgaged property was liable to be sold for making good the amount. Further a loan of Rs 1000/- was granted to her by the said bank on a simple mortgage-bond executed by the said Radhasani and two others on 11-11-1929 mortgaging the suit property. The bond also provided that if the amount was not paid within the stipulated period, the suit house was liable to be sold under the provisions of the Land Revenue Code for making good the amount of the loan. The allegation in the plaint and especially those in Para 3 which are inconsistent with what is stated in this Para are denied.

(4) The Jamkhandi Bank was the State Bank of Jamkhandi State. The allegations in Para 5 of the plaint which are contrary to what is stated in this Para are not correct and are denied. The said Bank was not an ordinary Bank private institution run by the Chief of Jamkhandi as contended by the plaintiff in Para 5 of the plaint. The said Bank was the concern of, and was managed by the Jamkhandi State.

(5) The allegations in Para 9 of the plaint that this defendant unauthorizedly brought the property to sale, that ~~it~~ the sale is illegal and ultra vires and that no title passed to defendant No.8 are not correct and are denied. The allegation in Para 7 of the plaint that the sale by this defendant was without any power given to him under the law is not correct. The sale by the defendant was not unauthorized nor is it against Law, ultra vires and illegal as contended by plaintiff in

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Paras 7 and 9 of the plaint. The allegation in Para 6 of the plaint that this defendant was misled is not correct.

(6) The allegation in Para 8 of the plaint is not correct and is denied.

(7) The plaintiff is not entitled to any of the reliefs prayed for by him in Para 11 of the plaint.

(8) The amount of loans and interest was in arrears for a long time and Shrimati Mahabubi made an application for applying the principle of Damdupat and making the auction sale of houses only. The plaintiff himself offered to pay the amount due under the three bonds on the principle of Damdupat. The total amount due on the three bonds could therefore be legally recovered by the sale of the suit houses. Under the rules of the business of the Bank, amounts of loan due to the Bank could be recovered as arrears of Land Revenue nd the simple mortgage bond provided that suit houses might be sold as per Land Revenue Code . The Government agreed to give the ~~commission~~ Concession of the principle of damdupat in consideration of Mahabubi's offer to allow the houses to be sold for the entire debt. The bonds provide also for sale of the property and for making good the deficit from any other estate. The houses were legally sold under the provisions of Land Revenue Code.

The plaintiff was given an intimation by service of notice dated 7-7-1952 and thereby he was given an opportunity to pay the amount, but the plaintiff did not avail himself of it.

(9) The plaintiff has filed this suit also for a declaration that the auction sale held is illegal and void etc. This relief is not referred to in the notice of suit. The plaintiff's suit is

thus bad for want of proper notice. The allegation of the plaintiff in Para 10 of the plaint that plaintiff has given necessary notice is thus not ~~x~~ correct.

(10) The auction sale in suit was regularly held according to the provisions of the Land Revenue Code which were applicable under the rules of business framed by the late Jamkhandi State authorities for the said State Bank. The plaintiff s claim in effect involved the setting aside of the sale. The jurisdiction of the Court is, therefore barred under Section 4(c) of the Bombay Revenue Jurisdiction Act.

(11) Defendant No.9 is not jointly interested with the other defendants in all the causes of action alleged by the plaintiff nor do the causes of action alleged by the plaintiff arise from the same transaction nor do they introduce any common question of law or fact. Hence the suit is bad for multifariousness.

For these ~~and~~ among other reasons it is prayed that the plaintiff's suit be dismissed with costs.

BIJAPUR. District Government Pleader,
Bijapur.
January 1953.

I, shri A.C.Angadi, District Government Pleader, Bijapur, do hereby ~~solemnly affirm~~ declare that what is stated in Paras 1 to 11 above is true ~~and correct~~ on information received and believed to be true. Signed in Bijapur on

District Government pleader,
Bijapur.

15-3-

Bijapur Civil Suit No. 255 of 1952.

In the Court of theCivil Judge,Senior Division,
Bijapur.

1. Ammad Radhasani plaintiff.

Vs.

1. Mahabubi and others. defendants

Herein the defendant No.9 opposes the Plaintiff's application for temporary injunction on the following grounds:-

(1). This defendant has put in his written statement to the suit today and for reasons stated therein the plaintiff is not entitled to any of the reliefs prayed for by him.

(2) The allegations in para 2 and 6 are not correct and are denied.

(3) The Plaintiff is not entitled to the temporary injunction sought for by him.

It is therefore submitted that Interim Injunction granted be revoked and Plaintiff's application be ordered to be dismissed with Costs

District Government Pleader,
Bijapur.

No. 1555/E 17 44

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 23rd Jan. 1953.

Subject:- Civil Suit No. 255 of 1952

MEMORANDUM.

With reference to his letter No. 105 dated the 12/1/53 forwarding a draft written statement and draft of objections re- application for temp. injunction in the suit noted above for approval, the District Government Pleader, Bijapur is informed that ~~two copies of~~ both the revised drafts ~~are forwarded herewith~~ approved ~~approved~~

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur

Submitted for signature
Yes
22/1

Issued
23/1

G.R.LD No 2635/E Dt 9/2/55 and the proof has been sent to the press on 30/5/55

30/5

Suits :

1 Bijapur.

For a declaration that sale of the suit property held on 24th December 1951 and confirmed by the Collector on 6th August 1952, is illegal and void and for an injunction to restrain the defendant from handing over possession of the suit property to defendant No. 8 and for allowing the plaintiff to redeem the suit property, etc.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 2635/E.

Bombay Castle, 9th February 1953.

Letter from the Collector of Bijapur, No. LAW-215, dated the 10th November 1952—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.
CIVIL SUIT No 255 OF 1952.
Ahmad Radhasani Dodmani ... ... Plaintiff;
versus
The State of Bombay and others ... . Defendants.

Memorandum to the District Government Pleader, Bijapur, No. 21626/E, dated the 22nd December 1952—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

Original R Lentowki

P. M. LAD,
for Secretary to Government

[P.T.O.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

With a copy of the brief.

No. of 1953.

Copy forwarded for information and guidance to

Submitted after issue
& file in S. Bij/53
(new)

Supdt. KB
9.6.53

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BIJAPUR CIVIL SUIT NO. 255 OF 1952.

Chronological Statement of Facts.

Plaintiff has filed this suit against the State of Bombay and others for a declaration that sale of the suit property held on 24th December 1951 and confirmed by the Collector on 6th August 1952, is illegal and void and for an injunction to restrain the defendant from handing over possession of the suit property to defendant No. 8 and for allowing the plaintiff to redeem the suit property, etc.

2. Shrimati Radhasani, daughter of Husensani Kalvant, deceased grand-mother of defendant No. 1, was granted loans as detailed below from the State Bank of Ex-Jamakhandi State:—

(1) A loan of Rs. 1,200 was granted on a mortgage bond executed on 5th April 1923 registered on 6th April 1923, mortgaging with possession land S. No. 597, Plot No. 21, measuring 15 acres and 13 gunthas and assessed at Rs. 38-5-4. The rate of interest was Rs. 7½ per cent. per annum. The amount was repayable within 6 years from the date of the bond. The bond provided that if any amount remained unpaid after the stipulated period of 6 years the mortgage property was liable to be sold to make good the amount thus outstanding.

(2) A loan of Rs. 1,719-10-0 was granted on a mortgage bond executed by Shrimati Radhasani and her 5 heirs (sons and daughters) on 3rd November 1923 and registered on 7th November 1923 mortgaging with possession S. No. 151, Plot No. 1, measuring 21 gunthas with an assessment of Rs. 10-12-6 in addition on the land mentioned in the previous mortgage bond. The balance due on the previous mortgage bond was consolidated and the total amount of mortgage debt of the second bond was Rs. 2,500. The loan was repayable within a period of 9 years. The bond also provided that if the amount was not paid within the stipulated period, the mortgaged property was liable to be sold for making good the amount

(3) A loan of Rs. 1,000 was granted on a simple mortgage bond executed by Radhasani and her daughters Yamanasani and Alasani, on 11th November 1929 and registered on 12th November 1949 mortgaging their houses bearing Jamakhandi Municipal No. 2777. The loan was repayable within a period of 8 years. The bond also provided that if the amount was not paid within the stipulated period the house was liable to be sold under the provisions of Land Revenue Code, for making good the amount of loan.

3. Jamakhandi Bank was the State Bank of Jamakhandi State and not a private bank. Rule 17 of the said Bank Rules provided that dues of the Bank loan (both principal and interest) could be recovered under the Land Revenue Code (i.e. as arrears of Land Revenue dues).

4. Shrimati Radhasani died on 19th November 1938. She belonged to a caste known as "kalawantin". Her name Radhasani also suggests that she was not

a Mohamedan. According to the custom prevailing in the said Kalawant family the name of the eldest daughter was to be entered as heir of the deceased. The District Government Pleader is requested to ascertain the fuller details about the said custom from the Collector. It is, however, clear from the Record of Rights that the name of the eldest daughter was entered on the death of the previous Kalawant holder of the property. Moreover the names of the persons of this family show that parties bear and mention their mother's name next after their own. This fact also suggests that the eldest daughters succeeded the mother. After the death of Radhasani the property was entered in the name of her eldest daughter Yamanasani. It is not known when Yamanasani died. But after her death the property was entered in the name of Shrimati Mahibubi Yamanasani Kalawant, according to family usage. The two houses, the suit property, in C. T. S. No. 2777 are entered in the name of Shiraj, the real brother of Shrimati Mahibubi, as manager of the family. The District Government Pleader is requested to ascertain the exact circumstances under which the two houses came to be entered in the name Shri Shiraj. This is *prima facie* inconsistent with the custom in the family that the property should be entered in the name of the eldest daughter. Presumably Shri Shiraj was managing the property on behalf of his sister. It is also not clear from the Collector's report whether the particular custom (viz., of entering the property of the deceased Kalawant in the name of her eldest daughter) implies that other members had no share in the property. The District Government Pleader may ascertain the point from the Collector and get necessary evidence to support the existence of such custom in the said family.

5. It appears that in 1941 the total amount due on account of principal was Rs. 3,500 and Rs. 2,987-10-0 on account of interest. On 11th June 1941 Shrimati Mahibubi submitted an application to the Dewan of Jamakhandi stating that the income from the lands thus mortgaged was not sufficient to defray the interest on the amounts of loans and consequently the interest amount was accumulating and requesting that the two houses should be sold and amounts realised should be utilised to wipe out the loans and interest and the remaining amount of loan, if any, should be written off.

6. The late Jamakhindi Authorities, therefore, tried to sell the said houses under Land Revenue Code four times within the period from 1942 to 1945; but the amount of bids offered was quite inadequate, and sale proceedings had to be stopped.

7. On 11th October 1950, Shrimati Mahibubi applied to the Collector for applying the principle of Damdupat to the loans. The Collector having submitted the necessary proposals in the matter, under Government Letter, Finance Department, No. 7240/33/22422-XVIII of 9th August 1951. Government approved the application of the principle of Damdupat to the recovery of loan and it was directed that Shrimati Mahibubi, the applicant, should be asked to credit within one month Rs. 4,103-3-8 which would make up double the amount of the original loan advanced by the bank. In view

of the order, the Collector on 7th September 1951 set aside the sale of the houses held on 29th January 1951. On 22nd August 1951 Shrimati Mahibubi was informed of the order of the Government regarding payment of Rs. 4.103-3-8 within one month.

8. On 6th October 1951 Shrimati Mahibubi submitted an application expressing her inability to pay the amount and requesting that Government might sell the houses by public auction for recovering the amount thus found due. The Mamlatdar was, therefore, directed by the Collector to hold the sale of the said houses. The date for sale was fixed for 24th December 1951.

9. On 18th October 1951, Shri Ahmedsaheb son of Radhasani Kalawant, the present plaintiff, submitted an application to the H. M. (R. D.) stating that he was the son of late Shrimati Radhasani and had a share in her properties including the suit houses, as the family was governed by the Mohamedan Law, and was consequently entitled to redeem the property. He expressed his readiness to pay the amount of the loans, if the principle of Damdupat is also extended to him. Under Government Letter, Revenue Department, No. 0/118387-B, dated 24th December 1951, he was informed that the mortgaged property did not stand in his name and his claim for a share in the said property was not supported by any record and he was advised to get his right adjudicated in the Civil Court.

10. In the meanwhile the revenue sale proceedings had already been started by the Mamlatdar in accordance with the orders of the Collector. The auction sale was held on 24th December 1951. The highest bid of Rs. 4,605 was from Shri Manikchand Amataram Shah (defendant No. 8) in whose favour the sale was knocked down subject to confirmation by the Collector.

11. On 18th January 1952, plaintiff, Shri Ahmed son of Radhasani, requested the Collector (enclosing a notice of suit with the letter) not to confirm the auction sale held on 24th December 1951 as he intended to file a suit against Government and the other heirs of Shrimati Radhasani for a declaration that he was entitled to his share in the said property according to Mohamedan Law, and that he was consequently entitled to redeem the mortgaged properties. Plaintiff also appears to have offered to pay the amount due to the State Bank of Jamakhandi in order to prevent the suit houses going to other hands. The District Government Pleader is requested to obtain from Collector a copy of the plaintiff's letter making such an offer as it is not found in the record of the case. On 31st May 1952, the Collector ordered that since the proceedings were under the Land Revenue Code, section 80 read with section 164 of the Code were applicable to the case. He, therefore, directed that if the plaintiff paid the amount within two days from the date of the intimation to him, the Prant Officer might accept the amount after giving the plaintiff a clear understanding that such acceptance of the amount would be without prejudice to the rights of persons who might thereafter establish any right to the suit property or with regard to heirship. The plaintiff was given intimation of the Collector's order

by notice served on him on 7th July 1952. The plaintiff, however, did not pay the amount. The Collector, therefore, confirmed the auction sale held on 24th December 1951 under his order No. R.C.V.S.R. 5061, dated 6th August 1952, and directed that further action under section 181 of Land Revenue Code should be taken.

12. Sale certificate was accordingly issued to the auction-purchaser and a date for handing over possession to him of the house was fixed for 30th August 1952 which was changed to 9th September 1952 as persons residing obstructed. Plaintiff filed this suit on 8th September 1952 and an interim injunction order of the Court was served on the Collector on the same date.

13. Plaintiff's main contentions are summarised below:—

(1) The Jamakhandi State Bank was not a Government institution even before the merger and is not so now and it is a private institution and mortgaged property could not be sold under the provision of Land Revenue Code and the sale ought to have been made after obtaining decree of a competent court; (2) that plaintiff made a representation requesting that the sale should not be confirmed and he should be given opportunity to redeem the said property; (3) this defendant unauthorisedly sold the said property for an amount of Rs. 4,000 not due on the particular mortgage on the suit houses alone but also on the other two mortgages. The sale was thus illegal and *ultra vires*.

14. The plaintiff prays (1) for a declaration that sale of the suit houses held on 24th December 1951 and confirmed on 6th August 1952, was illegal and void and defendant No. 8 got no right title and interest in the said property by reason of the illegal sale; (2) for a permanent injunction restraining this defendant from handing over possession of the suit property to defendant No. 8; (3) for allowing the plaintiff to redeem the suit property and to have the same conveyed to him after taking accounts; and (4) for costs of the suit.

Grounds of Defence.

Notice of suit not proper.—Plaintiff gave a notice of suit to the Collector on 18th January 1952, received by the latter on 22nd January 1952, in which he gave intimation of his intention to file a suit for a declaration that he was entitled to redeem the mortgaged property as he had a share according to the Mohamedan Law in the suit property. The plaintiff has filed this suit also for a declaration that the auction sale held on 24th December 1951 was illegal, void, etc. This relief which is quite distinct is not referred to in the notice of suit. The notice of suit given by him, therefore, was not in compliance with the provisions of section 80 of the Civil Procedure Code which are imperative and admit of no exceptions (*vide* Bhaguchand *v.* Secretary of State, I.L.R. 51 Bom. 725). The suit, therefore, should be dismissed for want of a proper notice.

2. *Jurisdiction.*—The auction sale of the suit houses was regularly held according to the provisions of the

Land Revenue Code which were applicable under the rules of business framed by the late Jamakhandi State Authorities for the Jamakhandi State Bank which was a concern of the State and not a private Bank. The plaintiff's claim in effect involves the setting aside of the sale. The plaintiff has not alleged fraud as a ground for setting aside the sale. The jurisdiction of the court is, therefore, barred under section 4(C) of the Bombay Revenue Jurisdiction Act, 1878.

3. *Plaintiff not entitled to sue.*—Shrimati Radhasani, the original debtor, belonged to a caste known as "Kalawantin". She was not a Mohamadan by religion. Her name also suggests that she was not a Mohamadan. In fact the Kalawanti caste is akin to the caste of Dasi or dancing girls in Madras. The members of the dancing girl (in this case Kalawanti) caste are not governed by the orthodox and strict Hindu (or Mohamadan) Law in matter of succession but by the special caste custom or usage (*vide* Shanmugathummal *v.* Gomathi Ammal, 1934, 67 M.L. of 861). According to a long-established custom followed in the family of the deceased Radhasani the eldest daughter inherits the property of the mother to the exclusion of the other male or female members of the family. Accordingly the property of the deceased Radhasani was, after her death on 19th November 1933, entered in the name of her eldest daughter Yamanasani as next heir in the Record of Rights, and after the death of the latter in the name of her daughter Mahibubi. This has been an ancient custom consciously accepted in the said family of the Kalawantin and the custom is definite, reasonable and not opposed to public policy. This defendant does not know whether the plaintiff is a Mohamadan by birth and even if he is, it is for him to prove that he is entitled in law to a share in the said property as heir to Radhasani. It should be urged that the plaintiff is not entitled in law to any share in the property. During all the years from the time of Radhasani's death the plaintiff raised no objection to the entries being made in the Record of Rights in the name of eldest daughters of the family as heirs; nor did he try to establish his claim to a share in the said properties. He is precluded by his conduct now from raising any claim to any share in the said property. The simple mortgage is executed by Radhasani and her two daughters, a fact which shows that the plaintiff had no share in the property at that time. The plaintiff is not, therefore, entitled to sue for a declaration that the sale was illegal and for setting it aside unless he first proves that he is entitled to a share or interest in the said property. The equity of redemption or any part of it, does not vest in the plaintiff.

4. *Multifariousness.*—Plaintiff has filed this suit for a declaration that the auction-sale was illegal, etc., and also for a declaration that he is entitled to redeem the mortgage property since he has a share therein under Mohamedan Law. This defendant and defendant No. 9 are not jointly interested with the other defendants in the latter cause of action. Both these causes of action also do not arise from the same transaction nor do they introduce any common question of law or fact. This suit should not, therefore, be allowed to be proceeded with unless this defect is

removed. In a suit on a mortgage for redemption of the mortgaged property no other cause of action can be included.

5. *Merits.*—(1) Plaintiff's first contention is that the simple mortgage bond pertaining to the suit houses executed on 12th November 1929 has nothing to do with the amounts of loans on the possessory mortgage bonds executed on 5th April 1923 and 3rd November 1923 respectively. This is not correct. The amount of loans and interest was in arrear for a long time and Shrimati Mahibubi made an application for applying the principle of Damdupat and making the auction sale of the houses only, so that the mortgaged lands might be available for the maintenance of her family. The amount of loans thus found due, giving her the benefit of Damdupat, could be recovered in the manner agreed to by her. Plaintiff himself offered at one stage (the District Government Pleader is requested to ascertain the date) to pay the amount due under the three documents found due on the principle of Damdupat. The total amount of loan due on the three bonds could therefore be legally recovered by sale of the houses.

(2) The next contention of the plaintiff is that the Jamakhandi State Bank was a private institution and that the suit property was unauthorisedly sold under the provisions of the Land Revenue Code. This is not true and should be denied. The said Bank was the concern of, and was managed by, the Jamkhindi State, and it was not a private institution. Under rule 17 of the Rules of Business of the said Bank amounts of loan due to the Bank could be recovered as arrears of Land Revenue. The simple mortgage executed on 11th November 1929 expressly provides that the houses might be sold as per Land Revenue Code, for recovery of the loan. Plaintiff may possibly urge that the amount of loan on the security of houses covered by the bond can only be recovered thus and not the amount of other loans. As to this it should be urged that on the application of Shrimati Mahibubi the principle of Damdupat was applied as a concession to her and it was at her instance agreed to sell only the houses for recovery of the total amount of the three loans. The Government agreed to give the concession of the principle of Damdupat in consideration of her offer to allow the houses to be sold for the entire debt. Moreover, the Collector could proceed under section 155 against any of the immovable property of the defaulter. Each bond provides also for sale of the property given as security and for making good the deficit from any other estate. On Mahibubi's request the auction sale of the houses only was effected for the total amount of loans, fixed on the principles of Damdupat. Therefore, the houses were legally sold under the provisions of Land Revenue Code for recovery of the amount.

(3) As to the contention in paragraph 6, viz., that the plaintiff made a representation requesting the Collector not to confirm the sale and to give him opportunity to redeem the property, it should be urged, if plaintiff implies that no such opportunity was given, that the imputation is not true. On 24th December 1951 he was informed that his right to redeem could not be recognised unless he proved it

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in a Court of law. On 7th July 1952 he was given an intimation by service of a notice to pay the amount of loans within two days. It was on his failure to pay the amount that the sale was confirmed by the Collector on 6th August 1952. Plaintiff was thus given an opportunity to pay the amount under section 80 read with section 164 of the Land Revenue Code but plaintiff did not avail himself of it.

(4) Plaintiff also contends in paragraph 7 that since this defendant, without any power given to it, sold the suit houses for recovery of Rs. 4,000 due not only on the particular mortgage bond but also on the other bonds the sale was illegal. This is not correct and is discussed in sub-paragraph (2) above. As stated therein the amount of loan with interest was fixed by reducing it on the principles of Damdupat. Auction sale of the suit houses was only effected for recovery of the amount, as Shrimati Mahibubi made a request to keep the lands free for her maintenance and to sell the houses only. Each bond provided that other estate would be liable for the deficit. Moreover, under section 155 of the Land Revenue Code the Collector was competent to proceed against any other immoveable property of the defaulter. Therefore, the contention of the sale being illegal and void is without substance.

6. For all the reasons stated above it should be urged that the suit fails and should be dismissed with costs.

14. Issues Nos. 4,6, and 10 and 8:- One Radhasani borrowed the loans in 1923 and 1925 from the suit State Bank by executing the possessory mortgage bonds, Exh. 73 and 74, by securing various properties. She then borrowed a loan of Rs. 1000/- in 1929 by executing the suit simple mortgage bond of the suit house, Exh. 49. From 1923 the Khata of Radhasani was opened in the Bank and all these three loans, stated above, were treated as one continuous transaction of Radhasani. The Jamkhandi State was merged into Bombay State in 1949 and the suit State Bank became the property of the Bombay State, the defendant No. 9. Under the rules of the said Bank, the Jamkhandi State was entitled to recover the dues of the bank by applying the provisions of the Bombay Land Revenue Code, Exh.68. Moreover, when the State Bank became the property of the Government (The State of Bombay), it could recover the dues of the bank under the provisions of the said Code. Thus the defendant No.9 was entitled to recover the bank dues, by applying the provisions of the Land Revenue Code.

15. The learned pleader for the plaintiff argued that the defendant No. 9 could have recovered only the amount, due under the suit mortgage bond Ex. 49 by selling the suit p roperty and that it (the defendant No.9) was not entitled to appropriate the balance of the sale proceeds towards the satisfaction of the dues of the other mortgage bonds of 1923 and 1925, Exs. 73 and 74. But I have laready stated that Radhasani had opened the khata in 1923 and was borrowing the loans from it from time to time andthat the said Khata was continusing all along. In a word the bank treated all t ose three mortgage bonds as the Same Khata. moreover, the defendant No. 9 could have applied

the balance of the sale proceed towards the ~~xxxxx~~ satisfi-
cation of any debt due to it from Radhasani. As the
defendant No. 1 could recover the dues of the previous mortgage bonds
by selling any property of Radhasani, there was no objection
for utilising the said balance derived by selling the
suit propery, towards the satisfaction of the previous
mortgage bonds. I, therefore, find no substance in the
contentions of the plaintiffin this respect. The defendant
No. 1 who claims to be the .full owner of the p roperty of
Radhasani expressed that she had no objection to the
procedure, followed by the defendant No. 9 and she also
requested the Government to appropriate the entire sale
p roceeds towards the satisfaction of all the debts of
Radhasani, Ex. 50..None of the defendants Nos. 2 to 7
also raised any objection to such app ropriation. The
proceeings for recovery of the dues by sale of the suit
properties lasted about ten years, but none of the heirs
of Radhasani paid off the dues and redeemed the p roperties.
Ex. 56 is clear on the point.

16. The learned pleader for the plaintiff
argued that the plaintiff was not served with legal
notice before holding the sale in 1951 and that the
sale was, therefore, not bindingx on the plaintiff.
The plaintiff is not one of the mortgagors in the first
place. The defendant No. 9 does not recognise him, (The
plaintiff) even now, as one of the heirs of Radhasani.
In the circumstances, it was not possible for the defendant
No. 9 to give notice to the plaintiff..Moreover, there was
no necessity for the defendant No.9 to serve the notice
to the plaintiff before selling the p roperties in 1951, as
once some notices had been served on some heirs including
the plaintiff in the previous occasions Exh. 54
and 67 and also the papers at Exh. 56. Apart from the formal
notice, the plaintiff and the defendants Nos 1 to 7
had full knowledge of the sale p roceedings going on
in the Revenue Court for full ten years. Thus the said

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contention also is not tenable as it is a mere irregularity even if the Plff were one of heirs of Radhasani

17 The defendant No. 9 held the auction sale of the suit p roperty under section 155 of the Land Revenue Code by exercising its inherent right to recover its dues and also in view of the right conferred on Jamkhandi State Bank by its rules, Exh. 68. The learned pleader for the plaintiff argued that the said p rocedure was wrong and invalid in law in view of the express provisions of section 69 of the Transfer of Property Act. But I am unable to agree with the learned pledder in this respect also in view of the p roviso of the said section itself. Under section 69 sub-section (3) of the Transfer of Property Act, the auction purchaser, the defendant No. 8, is protected and the plaintiff cannot challenge the said sale against the defendant No. 8. Thus the said auction sale cannot be set aside at all. The result is that the present suit for redemption is not at all tenable when the auction sale cannot be set a side against the defendant No. 8.

18. The defendant No.1, the defendant No.8 and the defendant No.9 also contended that the plaintiff was not ~~xxxxxx~~ one of the heirs of Radhasani and that the present suit for redemption etc. by the plaintiff was not all all maintainable. The plaintiff is not, as stated above, one of the executants of the mortgage bond, Ex. 49. He claims to be the one of the heirs of Radhasani, after her death in the capacity of her son. The defendants Nos. 2,3,5 and 6 are the sons of Radhasani, the defendant No. 4 is the second daughter the defendant No. 1 is the first daughter and the deft. No. 7 is the son's son of Radhasani. According to Mohammedan Law all the plaintiff and the defendants' Nos

1 to 7 will be the heirs of Radhasani after her death. In wnat view, the plaintiff would be entitled to inherit her properties and I need not make mention of the plaintiff's share in them at this stage, if he is entitled to inherit the properties according to Mohammedan Law. I have just held above that the plaintiff any any of the defendants Nos. 1 to 7 have no right to file the suit against the defendants Nos. 8 and 9 for redemption and that the auction sale, held by the defendant No. 9 in the name of defendant No. 8 in the year 1951 is binding on them. It is, therefore, not necessary for me to declare here the shares of these persons if the principles of Mohammedan Law were applicable to them. It is said that Radhasani left behind her a number of properties including the suit one. The plaintiff has not still filed the suit for partition and possession of his share in any of those properties, though he calls himself as one of the heirs of Radhasani. The defendant No 1 set up the defence of sustom or usage and stated that the plaintiff and the defendants Nos: 2 to 7 and himself belong to Kalawant family or caste and that the eldest dauthter of the deceased alone would inherit the p roperity left by the deceased, to the exclusion of all other children of the deceased (i.e. the plaintiff and defendants Nos.2 to 7). The defendants Nos.2 to 7 did not take any interest in the suit and the plaintiff and defendant No. 1 only led some evidence on the said point. But the learned pleader for the plaintiff devoted is full attention on the point at the time of his argument and cited a nummer authorities and referred to a number of books. He tried to point out that p rostitution was condmned by the society, that the custom, followed by the prostitutes or dancing girls or Kalwants, in respect of any matter , was against public policy and that the custom set up by the defendants 1 and 9 in suit should not be recognised by the Courts of Law. If the plaintiff had filed the suit for partition and possession of his share in Radhasani (s ~~xxxxxxxxxx~~

properties, the said question would have been of some importance and I could have discussed them to cover the full argument of the learned pleader for the plaintiff. But at present in the suit for redemption of one property of Radhasani, such questions could not be discussed at all, as none of the heirs of Radhasani could file a suit for redemption of the suit property after the sale of it in auction which had been held in 1951 to recover the Government dues.

19. The proper course for the plaintiff is to file the suit for partition and possession of his share in all the properties of Radhasani and try his lick there about his right to inherit Radhasani's properties. The defendant No.1 alleges in this suit also that there was a custom in her family (the Kalawant's or dancing girls) that the eldest daughter alone would inherit theestate of her mother. The plaintiff, ignoring the alleged custom, claimed his right over some portion of the property as Radhasani's heir, but I was surpirised to hear him at the time of his cross-examination when he stated that there was such a custom prevailing in his family. It would have been very difficult for the defendant No.1 to prove such a novel custom, but the plaintiff himself made her way easy by admitting the alleged custom. It was not necessary for the Court to consider whether the alleged custom of the Kalawants was proved or was against public policy in this suit. It is not known why the plaintiff came to the Court to redeem only the suit property and why he did not file the suit for a general partition. It may be possible that the plaintiff wanted to know his position in the matter of inheritance, regarding Radhasani's property in this suit and then file the suit for general partition and possession of his share in other properties. But I am not much concerned about the plaintiff's object or motive. As the suit for redemption, declaration etc. by any hire of Radhasani against the defendants Nos. 8 and 9 itself is not maintainable, there

is no necessity to declare in this suit who the heirs of Radhasani were at the time of her death and what custom, in the matter of inheritance, is prevalent in the family of the parties. Thus, I reserve that question for consideration in the next intended suit of the plaintiff. For these reasons, I record my findings on all the issues accordingly and pass the following order.

ORDER.

Plaintiff's suit stands dismissed. The plaintiff do pay the costs of the defendant No.1 in one set and those of the defendants Nos. 9 and 8 (together) in another set. The plaintiff and the defendants Nos. 2 to 7 do bear their own costs.

January 16, 1954.

Sd.M.H.Kazi.
Civil Judge,(Sr.Dn.).

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IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION)

AT BIJAPUR

REGULAR CIVIL SUIT NO.255 of 1952.

Pleaders

(1) Ahamad Radhasani Dodmani of Jamakhandi.

against.

(1) Mahabubi Yamanasani Doddamani of Bijapur.
(2) Shriraj Ramanasani Dodmani of Jamkhandi.
(3) Huseni Yemunasabi Dodmani of Jamkhandi.
(4) Allasani Radhasani Dodmani
(5) Husenbi Kadarsaheb Dodmani of Athani.
(6) Chandsaheb Radhasani Dodmani of Hubli.
(7) Hatim Ajuneersaheb Dodmani of Athani.
(8) Manikchand Amtaram Shaha of Jamkhandi.
(9) The State of Bombay, represented by the Collector of Bijapur.

Claim Rs.1205/-.

1. The plaintiff sues to obtain an injunction against the defendants Nos. 8 and 9 restraining them from taking possession of the suit property by declaring that the sale, held by the defendant No. 9 on 24-12-1951 in respect of the suit property was illegal and void and that the defendant No. 8 did not get any right over the said property on accoun of his purchase in the auction sale. He further sues to redeem the said property on taking accounts. He also prays for his costs.

2. The facts of the case are as follows:-

One Radhasani Dodmani of Jamkhandi Mortgaged the suit property for Rs. 1,000/- to the State Bank of Jamkhandi on 11-9-1929 by executing the suit mortgage bond. She was to get Rs. 15/- per month from the Chief of Jamkhandi and the said amount of pay was to be utilised by the said bank towards the satisfaction of the said debt. Radhasani died in the year 1934 leaving

behind her the plaintiff and defendants No. 1 to 7 as her heirs, viz. the sons and daughers. All these defendants 1-7 are interested in the mortgages property, but they did not join with the plainiff to file the suit for redemption and they are, therefore, added as the defend--ants in the suit. Radhasani had mortgaged her other properties to the State Bank on two different dates taking the loans to the extent of Rs. 3,000/-. The said two mortgages were possessory ones.

3. The defendant No. 9 is now managing the State Bank of Jamkhandi after the merger, though it was not the Government institution of Jamkhandi Chief. After the merger, the defendant No. 9 unauthorisedly brought the suit property to sale under the provisions of the Land Revenue Code without first obtaining the decree from the competent Civil Court. This act of the defendant No.9 was illegal and ultra vires and the defendant No.8 did not derive any right over the suit property on account of the auction purchase which took place on 24-12-1951. The plaintiff made representation to the proper authorities not to hold the auction sale, but the defendant No. 9 did not heed to it. Besides, the defendant No.9 recovered Rs. 4000/- and odd by selling thesuit property and utilised the balance towards the satisfaction of Radhabai's two other mortgage debts. This act of the defendant No.9 was also against law. The defendant No.9 was thinking of delivering possession of the suit property to the defendant No.8. Hence, the suit for declaration, injunction and ~~redemption~~ redemption.

4. The defendant No.9 in its written statement Exh. 28 denied the plaintiff's right to file the suit for redemption or declaration, as he had no interest in the suit property. It stated that the suit property belonged to Radhasani and she was a Kalwant by caste. It stated that according to the custom of Kalawants, prevailing in their family, the eldest daughter of

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the last holder was to succeed to the exclusion of the other male and female issues of the deceased and that according to this custom and usage the plaintiff was not the heir to the deceased Radhasani. It stated that Radhasani borrowed loans in 1923, 1925 and 1929 by executing the mortgage bond. It was stipulated in the mortgage bonds that if the amount was not paid within the period, the mortgaged property was liable to be sold for making good the amount under the Land Revenue Code. The Jamkhandi Bank in suit was the State Bank and after the merger of the said State, the said Bank Became the property of the Bombay State. It stated that the suit p roperty was sold under the Land Revenue Code according to law and the defendant No. 8 purchased it for proper value. It contended that the plaintiff was not entitled to any of the reliefs prayed for. It is also contended that the suit was bad for want of proper notice and was barred under section 4(c) of the Bombay Revenue Jurisdiction Act. It stated that the defendant No.9 was not jointly interested with the other defendants in all the causes of action and that the suit was, therefore, bad for multi-fariousness. It also stated that the defendant No. 1 alone was owner to the suit property and that she did not raise any objection to this sale held on 24-11-1951. It prayed for its costs.

5. The defendant No.8 in his written statement Ex. 20 practically supported the defendant No.9, He further contended that the sale could not be set aside under section 69 sub-section (3) of the Transfer of Property Act. He prayed for his costs.

6. The defendant No.1 in her written statement Exh.22 alleges that she was the full owner of the suit property and that the plaintiff had no right in it and thus not entitled to redeem the suit property. She

denied the plaintiff's allegation that he and defendants Nos. 1 to ~~XX~~ 7 were the heirs of Radhasani. She stated that the suit Jamkhandi State Bank was the Government Institution and that the defendant No.9 was competent to bring the suit property to sale for recovery of the dues of the said bank. She contended that the plaintiff had no cause of action to file the present suit. She stated that Radhasani was a dancing woman (Naikini) and thus was the watandar Naikini of Jamkhandi State. She further stated that there was an ancient custom in the matter of inheritance and the eldest daughter was to succeed to the estate of the Nakkini to the exclucion of other heirs. She also stated that the suit properties had been given by the Jamkhandi State as Inam for rendering service of dancing on ceremonial occasions of the Maharaj and as such, so the eldest daughter was to succeed to the estate. She contended that the suit was barred by estoppel and by limitation. She prayed for her costs.

7. The defendant No. 2 supported the written statement of defendant No. 1 in her pursis Exh. 23. The defendant No.3 also supported the written statement of the defendant No. 1 in her pursis Exh. 33. The other defendants filed no written statements.

8. The following issues were framed at Exh. 39 :-

(1) Whether the notice given under section 80 is p roper and valid?

(2) Whether the defendant No. 9 proves that the suit is barred under the provisions of sec. 4 6 of Revenue Jurisdiction Act?

(3) Whether the suit is bad for multi-fariousness?

(4) Whether the defendants prove that the plaintiff is not entitled to sue for redemption and declaration for the reasons, given in their w.S.?

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(5) Whether the plaintiff proves that the defendant No.9 is not the owner of the State Bank of Jamkhandi, now?

(6) Whether the defendant No,9 was justified in putting the properties which had been mortgaged for Rs. 1000/- to the auction sale and recover the amount of Rs. 3000/- of the other mortgage? If not, whether the sale is valid?

(7) Whether the plaintiff proves that the State of Bombay cannot recover the mortgage amount?

(8) Whether the plaintiff is entitled to the redemption sought?

(9) What decree?

(10) Whether the suit is not maintainable against defendant No.8 for the reasons, given at Exh. 42?

My findings

on issue No.1:- Yes.

on issue No.2:- No

-do- No. 3:- No

-do- No. 4:- None of defendants 1-7 is entitled to file the suit for redemption. The rights of plaintiff and defendant No.1 interse are reserved for the next suit.

-do- No. 5:- No.

-do- No. 6:- Yes.

-do- No. 7:- It could recover

-do-No. 8:- No.

-do-No 9:-

-do-No 10:- Yes; it is not maintainable

Reasons :-

10 Issues Nos. 1 and 3:- The defendant No. 9

contended that notice under section 80 of the Civil Procedure Code was not given in a proper form as the plaintiff did not make mention in the said notice that he was filing the suit for setting aside of the sale. Exh. 72 is the notice received by the defendant No.9. It is true that the plaintiff has not actually stated, as he has done now in the plaint, that he would file a suit for setting aside of the sale held by the Collector. But from the substance of the notice it can be gathered that he was desiring to redeem the property in suit dis-regarding the sale held by the Collector. The said notice, therefore, gave the clear idea of plaintiff's suit and I can treat that the said notice was proper and that the suit was, therefore, not barred under section 80 of the Civil Procedure Code. I need not cite the authorities on that point to support my view.

11. The plaintiff wants to redeem the property by declaring that the auction sale held by the defendant No.9 in the name of the defendant No. 8 was null and void. In order to get that relief from the Court the drfendants Nos. 8 and 9 were necessary parties to the suit. As the plaintiff alone is not the full owner of the suit property and as the defendants Nos. 1 to 7 are also interested in the suit property as heirs of Radhasani, he added them as defendants when they failed to join the plaintiff. I, therefore, see no force in the contention in respect of misjoinder of parties and causes of action. I thus record my findings on issues Nos. 1 and3 in favour of the plaintiff.

12. Issues Nos. 2, and 5 and 7:- The plaintiff stated in his plaint that the State Bank of Jamkhandi did not belong to the Jamkhandi State and that it was a private bank of the Chief of Jamkhandi State. He further stated that the State of Bombay was not entitled to recover the dues of that bank f rom Radhasani's heirs by selling her property. He also stated that the State of Bombay was not the owner of the said

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Bank. His learned pleader argued that the said bank had been started in the nameof Ruler's ancestor and that it was therefore the private bank of the Ruler himself. In order to support his view, he referred to the gazette of Jamkhandi Exh. 68. It is true that the suit bank had been named in the name of Ruler's ancestor formally but it was actually treated as the State Bank. From the administration reports of the State, Exh. 69 to 71 it can be seen that the State recognised that suit bank as one belonging to the Jamkhandi State. If the said bank was really the property of the Chief or the Ruler of Jamkhandi, the State of Bombay could not have taken possession of it as the property of the Jamkhandi State. The Ruler of Jamkhandi did not lay any claim over the said bank as it, private property when that State was merged into Bombay State. The plaintiff himself wrote in his plaint that it was a State Bank, omitting the total name of Ruler's ancestor. The mortgage bond, Exh. 49 itself shows that the bank eblonged to the State. The learned pleader for the plaintiffargued that the mortgage bond had been executed in the name of bank officer but not in the name of the State. It is true that Radhasani executed the mortgage bond in such a fashion. But the form is immaterial Moreover some officer had been appointed by the State to manage it and he was thus called Book Officer. The Chief himself did not treated the said bank as his private or personal property and the plaintiff cannot turn it as a personal property of the Chief. In the administration reports, it is clearly stated that on account of the foundation of the said bank the subjects of the State derived benefit. If it were a private bank, there was no necessity to make mention of the benefits of the subjects in the States's administration reports. As it was a bank, it was registered in the ordinary and routine manner

and I attach no importance to such registration. I thus ~~hold that~~ that the suit bank belonged to the Jamkhandi State and that the Bombay State (i.e. the defendant No.9) became the owner of it after the merger of the said State. As the State of Bombay became the owner of the said bank after the merger, it had every right to recover the amount due to the said bank

13. The defendant No. 9 contended that the suit was barred under section 4C of the Revenue Jurisdiction Act, as the plaintiff wants to set aside the sale held by the revenue authorities under the provisions of the Land Revenue Code. The learned poeader for the plaintiff stated that the suit bank was not belonging to the Government and that the recovery of the dues of such a bank could not be made by applying the provisionsof the Land Revenue Code. He further argued that section 4 of the Revenue Jurisdiction Act was not at all ,applicable to the present case. When the Court just now held that the suit bank was the property of the Bombay State after the merger, the said bank can r ecover the dues of the bank from the defaulters. The learned argument of the learned pleader for the plaintiff was not, therefore, tenable to get over the objections taken by the defendant No. 9.But however, I may state here that it is not the order made by the revenue authorities under the Land Revenue Code. The plaintiff has come to the Court for for redeeming the p roperty as one of the heirs of Radhasani, in his own rights disregarding the auction sale held by the defendant No. 9. The revenue authorities have not passed any order against the plaintiff specifically. If the plaintiff comes to the Court to set aside the order, passed behind his back, it cannot be said that the plaintiff was questioning the order passed under the Land Revenue Code. Thus I ~~did~~ hold that the present suit is not barred by section 4 C of the Revenue Jurisdiction Act.

ORIGINAL DECREE.

Date of presentation:- 8-9-1952.
Date of registration :- 8-9-1952.
In the Court of the Civil Judge,Sr.Dn.at Bijapur.

Spl.Civil Suit No. 255 of 1952.

1. Ahmad Radhasani Dodmani, age 48, occupation Dentist of Jamkhandi. .... Plaintiff.

Vs.

1. Mahabubi Yamanasani Dodmani, age 29, occ. house-hold work of Bijapur.

2. Shiraj Yamanasani Dodamani, age 51, occ. Govt.servant of Jamakhandi.

3. Huseni Yamanasani Dodamani, age 28, occ.Govt.servant, at Dehoo Road Poona.

4. Allasani Radhasani Dadamani, age 55, occ. house-hold work of Jamakhandi.

5. Huseni Kadersaheb Dodamani, age 55, occ. household work of Athani.

6. Chandasaheb Radhasani Dodamani,age 50, occ.Tailor of Hubli.

7. Hatim Ajunearsaheb Dodamani, age 37, occ Govt.servant of Athani.

8. Manikchand Atmaram Shaha,age 48,occ.merchant,of Jamkhandi.

9. The State of Bombay, represented by the Collector of Bijapur.

Claim Rs 1205/-.

1. The plaintiff submits as hereunder:-

1. That one Radhasani Dodamani of Jamkhandi mortgaged the following property to the state Bank of Jamkhandi on 11-11-1929 for Rs 1000/-

(a) Description of property:-

C.S.No. 27777, Municipal No. 1693 of Jamkhandi.

(b) Amount of mortgage:- Rs 1000/-.

(c) Rate of interest:- 0-12-6.

(d) Radhasani Yamanasani and Allasani are the mortgagors.

(e) Date of mortgage:- 11-11-1929.

(f) Radhasani stipulated that Rs 25/- every month of her pay to be deducted towards the mortgage debt.

(g) The State Bank, Jamkhandi is a mortgagee.

2. The said Radhasani died in 1934 and the present plff being her son along with the defendants 1 to 7 are the heirs of the said Radhasani. The defendants Nos. 1 to 7 are not

willing to join as plaintiffs in this suit; as they are interested in the mortgage property, they are made defendants. The plaintiff who is entitled to redeem the mortgage has brought this suit for redemption of the mortgage property after taking accounts and at the same time declaring that the sale in favour of defendant No.8 is illegal and as such the right to redeem has not been extinguished.

3. The said Radhasani had mortgaged her other properties to the State bank, Jamkhandi on different dates taking a loan of nearly Rs 3000/-. The said mortgages being possessory mortgages, have nothing to do with the present transaction which is a simple mortgage.

4. The said Bank of Jamkhandi has taken the mortgage bond in question on 11-11-1929 and the said Bank has kept accounts as to the amount due from the plaintiff and the defendant Nos. 1 to 7. The plaintiff is not in a position to give the exact amount due.

5. Defendant No.9 after the Jamakhandi State becomes merged in the State of Bombay has been managing the State Bank by recovering his dues etc. It may be noted that the said Bank is not a Government institution even before the merger and it was never a department of the Government even. The said Bank was an ordinary private institution run by the Chief of Jamkhandi. After the merger, the defendant No.9 unauthorisedly brought the suit property to sale under the provisions of the Land Revenue Code without obtaining a decree from a competent Court. This act of the defendant No.9 is illegal and ultravirous and no title in the suit property passed to defendant No.8, auction purchaser, in the said sale. The said sale took place on 24-12-1951.

6. The plaintiff made representations to the proper authorities that the sale should not be held and confirmed and that he should be given opportunity to redeem the property. But deft No.9 being misled by the defendant No.8 is threatening to plaintiff to put defendant No.8 in possession of the suit property by ousting the plaintiff from the possession of the property.

7. Besides this the defendant No.9 without any power given to him under the law has sold the property for the recovery of Rs 4000/- and odd Rs due not under this particular mortgage but under two other mortgages effected by Radhasani. This unauthorised act of the defendant

in selling the properties against law, altravirous and illegal. Defendant No.8 and 9 inspite of the representation, refused to allow the plaintiff to redeem the property Hence this suit for a declaration that the sale held by the deft No.9 is illegal and ultravirious and that defendants No.8 got no title or interest in the suit property under such a sale and also for an injunction restraining defendant No.9 from evicting the plaintiff who is in possession of the property and handing over possession to defendant No.8. This suit is also for redemption of the suit property as stated above.

8. The cause of action for this suit arose on 30-8-1952 when defendant No.9 issued a notice to hand over possession of defendant No.8 and also on 6-9-1952 when defendant No.9 is threatening the plaintiff by physically removing him from the property. The cause of action also arose for redemption when defendant No.9 refused to redeem in 1952.

9. This suit is for a declaration that the sale is void and for an injunction restraining defendant No.9 from putting defendant No.8 in the possession of the suit property after removing the plaintiff phusically. For this purpose the suit is valued at Rs 205/-.This suit is also being for redemption Court fee on Rs.1000/-, the mortgage amount, is valued at Rs 1000/-. This suit for the two reliefs are valued at Rs 1205/- for the purpose of court fee and also for pleader's fees and jurisdiction.

10. The defendant No.1 to 7 are interested in the mortgage property and as they refused to join the plff to file the suit, they are made defend ants as per law. Deft No.9 is responsible for holding the illegal sale and also refusing to allow the plaintiff to redeem. Defendant No.8 is a purchaser of the suit property in the illegal sale that was held in December 1951. Defts Nos. 8 and 9 are threatening to oust the plaintiff physically from the possession of the property. So they are made parties to this suit. Defendant

No.9 is the State of Bombay. This suit is to be filed against him only in this Court. So this Court has got jurisdiction to try this suit. The plaintiff has given a necessary notice under Sec.80 of the Civil Procedure Code on 18-1-1952 which was received by the defendant No.9 through the Collector,Bijapur on 22-1-1952. After the statutory period is over this suit is filed.

11. The plaintiff prays:-

(a) That the Court be pleased to declare that the sale held by defendant No.9 on 24-12-1951 in respect of this suit property and confirmed is illegal and void and that defendant No.8 in the said property and that defendant No.9 be restrained permanently from ousting the plff from possession of the suit property by hoñding over possession to defendant No.8.

(b) That the plaintiff be allowed to redeem this suit property and to have the same conveyed to him after taking accounts.

(c) That the cost of the suit with such other relief as the Court deems necessary be awarded.

This suit coming before Shri M.H.Kazi, Civil Judge,Sr.Dn. Bijapur in the presence of Shri V.V.Mudholkar for the plaintiff, and in the presence of Shri K.A.Janvekar, Shri S.T.Patil and Govt. pleader for the defendants it is hereby decreed as follows:-

Plaintiff's suit stands dismissed. The plaintiff do pay the costs of the defendant No.1 in one set and those of the defts Nos. 9 and 8(together) in another set. The plaintiff and the defts Nos. 2 to 7 do bear their own costs.

Bill of costs.

For plaintiff

1. Court fees	Rs 113-0-0
2. Vakalat	Rs 10-0
3. Exs. 6,7,8,12,25,27,31 43,85 and 95.	Rs 6-4-0
4. Process fee	Rs11-4-0
	Rs18-12-0
	2-8-0
5. Pleader's fee	75-0-0
6. Stamp for copies.	1-9-0
Costs disallowed	Rs 229-9-0
exs.6,7,8,12,25,27,31,43,85,95.	6-4-0
Total Rs	223-5--0.

	For defts 1,2 and 3		Deft No.8		Deft No.9.
1.	Vakalat	0-10-0	0-10-0		0-10-0
2.	Ex. 75	0-10-0	exs.42, 44A,35 36,37& 97	3-12-0	exs11,20, 26,40,44, 48. 3-12-0
3.	Pleader's fees	75-0-0	75-0-0		75-0-0
4.	Stamp for copies	1-4-0	1-4-0		0-10-0
		Rs 77-8-0	Rs 79-6-0		Rs 80-0-0
	Cost'disallowed.	Rs0-10-0	Rs 3-12-0		Rs 3-12-0
		Rs 76-14-0	Rs 75-10-0		Rs 76-4-0

Given under my hand and seal of the Court this day of 16th January 1954.

Sd.B.K.Kop.
Clerk.

Sd.M.H.Kazi.
Civil Judge,Sr.Dn.Bijapur.

Sd..K.R.Rad.
Pleader for plff.

Sd.K.A.Janvekar.

Sd.A.C.Angadi.D.G.P.

Suits:

Bijapur.

For a declaration that sale of the suit property held on 24th December 1951 and confirmed by the Collector on 6th August 1952, is illegal and void and for an injunction to restrain the defendant from handing over possession of the suit property ~~x~~ to defendant No.8 and for allowing the plaintiff to redeem the suit property, etc.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 10401/E
Bombay Castle, 22nd April 1954.

Read Government Resolution, Legal Department No.2635/E, dated the 7th February 1953.

In the Court of the Civil Judge (Senior Division), Bijapur. Civil Suit No.255 of 1952.
Ahmad Radhasani Dodmani -- Plaintiff.
vs.
The State of Bombay -- Defendant.

Letter from the District Government Pleader, Bijapur No.87 dated the 20th January 1954 stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur, on the 16th January 1954 ~~1952~~ when the following order was passed:-

" Plaintiff's suit stands dismissed. The plaintiff ~~xxxxxx~~ do pay the costs of the defendant No.1 in one set and those of the defendants Nos.9 and 8 (together) in another set. The Plaintiff and the defendants Nos. 2 to 7 do bear their own costs. "

Letter from the District Government Pleader, Bijapur, No.87, dated the 20th January 1954, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded

By order and in the name of the
Governor of Bombay,

Original R.T.Katarki
(R.T.KATARKI),
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Submitted for Signature.

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Issued MBC 22/4

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